1946. **File No.** S. DWR. 1/46

Examined.

Legal **DEPARTMENT**

A. **BRANCH**

P. 3(E) 1946

Subject:—

Suits: Dharwar

In the court of the Civil Judge (Senior Division), Hubli.

Civil Suit No 32 of 1945

M. Hirachand Lakamasi — Plt/Hs.
Pressing & Ginning Factory
at Hubli

Vs.

The Province of Bombay — Defts.

File No. S. DWR. 1/46.

Ext. Secty. Slip 24-B

S. DWR. 1/46

C O N T E N T S.

Legal Department File No. S: DWR. 1/46.

Sr. No.	Compilation No.	Subject	Pages.
		Suits Dharwar	
		C.S. No. 32 of 1945	
		M. Hirachand Lakamsi	
		vs.	
		Province of B'bay.	
		office Note.	

Dharwar Civil Suit No. 32 of 1945.

This suit is filed against Government by the proprietors of the N. Hirachand Lakhamsy Ginning and Pressing Factory at Hubli for recovery of Rs. 6038-15-6 due as arrears of rent upto the end of March 1945 for their Godowns used by the District Supply Officers for storage of Government grains at Central Godown, Hubli, and for possession of the godowns with future mesne profits and costs.

The godowns used by the Supply Department and the dates on which possession of each of them was taken are as under :

No. of godown	Date of possession
1	1- 7- 1944
2	1- 6- 1944
3	"
4	"
5	10-5-1944
6	1-7-1944
13	1-3-1944
14	1-1-1944
15	3-2-1945
16	23-12-1944
17	1-4-1944
19	23-12-1944
20	3-1-1945
21	23-12-1944
22	5-2-1944
28	1-1-1944

Godowns Nos. 13, 14, 22 and 28 were taken on lease by the Mamlatdar of Hubli under written agreements of lease. The record does not contain either the original agreements (which must be with the plaintiffs) or copies thereof but it is said that the lease was executed in the form at p. 3 of File

III. There is no dispute that the monthly rent of each of these four godowns was fixed as under :

No. 13	Rs. 75
No. 14	Rs. 75
No. 22	Rs. 75
No. 28	Rs. 60.

It is also common ground that the above rent has been regularly paid to the plaintiff from the date of possession upto the end of August 1944 (see Plaintiff's letter dated 26.10.1944 to the District Supply Officer and the Reports of the Central Godown Officer, Hubli and the Godown Manager, Hubli dated respectively 19.12.1944 and 19.4.1945). In the case of godown No. 5 a rent of Rs. 85 per month has been paid for one month from 10.5.1944 to 9.6.1944 (Ibid). Godown No. 17 was given rent free.

File I, pages 13 and 25 of File II p.59.

In respect of the remaining godowns no written or oral agreement was made and no rent has been fixed or agreed to between the parties. On 14/17.7.1944 the District Supply Officer requested the Executive Engineer to fix the rent of godowns Nos. 1 to 6, 13, 14, 22 and 28. The Executive Engineer fixed the total rent of these ten godowns at Rs.550 per month as detailed in his letter dated 24th August 1944 to the District Supply Officer.

File I,p.3.

File I,p.5.

On 26.10.1944 the plaintiffs sent to the District Supply Officer a statement giving details of rent paid and rent in arrears in respect of each of the 10 godowns aforesaid and claimed a balance of Rs. 2350. On 17th January 1945 a further reference was made to the Executive Engineer for fixing the rent of the ten godowns taking into consideration the Verandah in front of the above verandah, verandah in front of godowns 2 and 14 and open space in front of the same.

File I,p.13.

File I,p.31.

He was also requested to fix the rent of godowns Nos. 15,16, 18,19 and 20 which had in the meantime been occupied and of godown No. 17 which till then was being used free of rent. Accordingly the Executive Engineer revised the rent previously fixed in respect of the first ten godown and also fixed the rent of Nos. 15, 16 and 21. The total rent so fixed by him was Rs. 832 as detailed in his letter dated 16th April 1945. The District Magistrate, Dharwar passed an order dated 27th April1945 sanctioning the rent fixed by the Executive Engineer. Meanwhile, the plaintiffs who had been pressing for rent, had been paid on 2.3.1945 an advance of Rs.4500 which they had accepted under protest.

File I,p. 63.

File I, p.67.
File III, p.47 and
File II, p.59-60.

On receipt of the District Magistrate's order dated 27th April1945, the plaintiffs' Manager informed him on 7.5.1945 that the rent offered by the District Magistrate was not acceptable to the plaintiffs. He also demanded vacant possession of the godowns which were needed for working the factory and further suggested that since no agreement had been reached on the question of rent the godowns should be requisitioned and the compensation determined by an arbitrator under the Defence of India Rules as proposed by him in his previous letter dated 15th March 1945. It may be noted that in the last mentioned letter the plaintiffs had demanded the delivery of vacant possession ~~on or~~ before 1st April 1945.

File I, p.81.

File I,p.51.

Having received no reply, the plaintiffs, on 16th May 1945 gave a statutory notice to Government under section 80 of the Civil Procedure Code claiming Rs. 6038-15-6 as arrears of rent due after deducting the advance of Rs. 4500 and possession of the premises. On 9th June 1945 the Collector sanctioned a rent of Rs. 20 per month for godowns Nos. 17,19 and 20.

File I,p.89.

File I,p.103.

On 23rd July 1945 the plaintiffs filed the present suit in the Court of the Civil Judge, Senior Division, Dharwar, claiming arrears of rent as aforesaid, with possession of the

godowns and mesne profits.

In the case of godowns Nos. 13, 14, 22 and 20 rent has been paid upto the end of August 1944 under an agreement alleged to have been executed by the Mamlatdar. With regard to the remaining godowns no rent had been fixed and none paid except one month's rent for godown No. 5. The plaintiffs claim rent at the following rate for godowns in respect of which there is no agreement.

Number	Monthly rent
1	Rs. 150
2	Rs. 85
3	Rs. 85
4	Rs. 85
5	Rs. 85
6	Rs. 85
15	Rs. 70
16	Rs. 85
17	Free
19	Rs. 90
20	Rs. 28
21	Rs. 75

On the other hand the Executive Engineer has fixed a total rent of Rs. 832 for all godowns excepting Nos. 17, 19 and 20 and for the latter a rent of only Rs.20 per month has been sanctioned.

It is submitted that this is pre-eminently a case for amicable settlement. Dealing first with the case of the four godowns in respect of which there is an agreement, the agreed rent which has been paid only upto 31st August 1944 will have to be paid. The form at p. 3 of File III in which the Mamlatdar is alleged to have executed the lease in plaintiffs favour is silent about the duration of the term of the lease. A lease which is silent as to the

duration of the term would create a tenancy at will which would be converted into an ordinary monthly tenancy by payment of rent. (See Mulla: Transfer of Property Act, p.568). In the case of the other godowns no agreement was made and no rent has been paid. Since Government were in ~~permanent~~ permissive occupation, ~~of~~ a tenancy at will will arise in respect of these godowns and Government would be liable to pay reasonable compensation for use and occupation. It is submitted that neither the plaintiffs nor the Court would be bound to accept the figures sanctioned by the District Magistrate. The amount of compensation would be a question of fact to be determined by the Court and in deciding that question the Court would take into consideration the rent previously realised by the owners in respect of the premises.

As regards possession, a plea of want of notice under section 106 of the Transfer of Property Act would be available in the case of the four godowns held on a monthly tenancy. A tenancy from month to month is, under that section, terminable on the part of either lessor or lessee by fifteen days' notice expiring with the end of a month of the tenancy. It might be contended for the plaintiffs that their letter to the District Magistrate dated 15th March 1945 is a sufficient compliance with the provisions of section 106. Para. 7 of that letter is as follows :

> "I have now many demands for my factory to work. I have been compelled to refuse them on account of the factory compound and godowns being occupied by your supply department. I am thus put to heavy loss. I have therefore to inform you however that the arrears of rent as claimed be cleared off up-to-date and the godowns and factory compound be vacated and handed over to me before 1st April 1945 ..... as I do not want to lease out the factory compound and godowns any further..

Assuming that this letter can be construed as a notice to evict under section 106, it is prima facie invalid so far as godown No. 22 is concerned. The lease of that godown commenced from 5th February 1944. Therefore a notice given on 15th March to quit before 1st April would not be 15 days notice expiring with the month of tenancy. Even in respect of godowns Nos. 13,14 and 28 the lease of which commenced on the 1st of the month, the notice would be invalid. If the tenancy is a monthly tenancy from the first of a month, it expires on the midnight on the first of each succeeding month (see. 35 Bom.L.R. 6 P.C.). So that in this case, the notice to ~~evict~~ quit before the 1st April is not a valid notice under the section.

In the case of the remaining godowns however, no notice would be necessary. A tenancy at will is terminable at the will of latter party, on demand by the landlord for possession being sufficient. (See Mulla: Transfer of Property Act, p. 570).

One more aspect of the case may be noted. The notes of the Collector at p. 113 of File I indicate that a sum of Rs. 5000 has been spent for repair of the godowns, and the Collector had desired to deduct it from the rent "to a reasonable extent". Here again Government is not on very firm ground. In the absence of an express contract, the lessor is under no liability to repair. The words "any repairs which he (lessor) is bound to make to the Property" in section 108(f) refer to an express covenant to repair the onus of proving which is on the lessee. It is only if the lessor commits a breach of the express covenant that the lessee has the right to do the repairs himself and deduct the amount from rent. There is no evidence on record to show that the plaintiffs had expressly undertaken to repair the godowns. The Collector's note does not explain the nature of the repair work which cost such a large amount but

* vide Mulla: T.P. Act pp. 607-608

it is possible that this sum was spent for making a stone pavement in some of the godowns - a work which the plaintiffs had expressly declined to undertake. (See p. 52 para 1 of File I).

It is therefore submitted that with the possible defence of want of notice in respect of four godowns, Government has not a strong case to defend, and it seems advisable to ask the Collector to arrive at an amicable settlement with the plaintiffs.

(The papers of this case were received on 4.2.1946. On 6.2.1946 a letter was issued to the D.G.P. as usual to apply for 2 months adjournment. However, it appears from the D.G.P's letter of 20.2.1946 that the Court rejected the application for adjournment and fixed the suit for ex parte hearing on 9.3.1946. In case the above proposal to compromise the suit is approved, the D.G.P. may be requested to move the Court for setting aside the ex parte order and file [a written statement disputing the termination of lease & the reasonableness of the rent claimed & claiming the right to retain cost of repairs] a purshis in Court that the suit is being compromised.)

Rdll
26/2/46.

A.L.R. As slightly amended
R.L.A. RR 27/2

I agree. This is a case for compromise

Rdll
28/2/46

Dy No 1714
1-3-46.

Dy RD

This is a matter to be dealt with by Dd (Complex).

Dd (Complex)

1-3-46

FINANCE DEPT (SUPPLY)
Dy No 1497
6 MAR 1946
Secretariat

Write to Collr. accordingly with copy of R.L.A's note

5/3/46

Dd DCS (2)

5/3